

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 511, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-6-9.2 IS ADDED TO THE INDIANA CODE AS A
- 3 NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2003]:
- 5 **Chapter 9.2. Sale of Gasoline Below Cost**
- 6 **Sec. 1. As used in this chapter, "below cost" refers to the sale of**
- 7 **gasoline by a retailer at a price that is less than:**
- 8 (1) cost, as defined in section 2; plus
- 9 (2) one and one half percent (1.5%).
- 10 **Sec. 2. As used in this chapter, "cost", as applied to the retailer,**
- 11 **means:**
- 12 (1) the actual current:
- 13 (A) delivered invoice cost; or
- 14 (B) replacement cost;
- 15 **whichever is lower, without deducting customary cash**
- 16 **discounts; plus**
- 17 (2) any excise or sales taxes imposed on the gasoline after its
- 18 purchase by the retailer and before the resale of the gasoline;
- 19 plus
- 20 (3) the retailer's cost of doing business at the location at which
- 21 the gasoline is sold.
- 22 **Sec. 3. As used in this chapter, "retailer" means any person,**
- 23 **partnership, firm, corporation, or association, foreign or domestic,**
- 24 **selling any gasoline to the consumer and not selling the gasoline for**
- 25 **the purpose of resale in any form.**
- 26 **Sec. 4. (a) Any offer by a retailer, by way of posted price or**

indicating meter, to sell gasoline at a price that is below cost is prohibited.

(b) A retailer does not violate subsection (a) by selling gasoline:

(1) at the same price as; or

(2) at a legally posted price higher than;

the price at which a competitor is selling gasoline in the same market area and on the same day.

(c) A retailer does not violate subsection (a) by offering gasoline for sale at a price below cost as part of a promotion at an individual location for not more than three (3) days in any calendar quarter.

Sec. 5. The attorney general has the following powers and duties regarding a situation in which gasoline is allegedly being sold below cost:

(1) To receive complaints.

(2) To investigate.

(3) To institute a legal action and seek the following:

(A) injunctive relief as appropriate.

(B) A civil penalty under section 7 of this chapter.

Sec. 6. (a) Information that the attorney general obtains during an investigation under this chapter, including information obtained from a person who responds to the investigation and designates the information as confidential, is confidential for purposes of IC 5-14-3-4(a)(1) and must be maintained as confidential until the attorney general completes the investigation and determines a course of action concerning the alleged violation. Before an investigation is complete, the attorney shall not disclose any information obtained in the course of the investigation to a person not specified in subsection (c). Upon the completion of an investigation, if there is an agreed upon settlement or if charges are filed, the information obtained by the attorney general during the investigation becomes public under IC 5-14-3.

(b) Upon request, the attorney general shall make available to the public aggregate information concerning alleged sales of gasoline below cost. The aggregate data may not identify particular persons or locations under investigation.

(c) If the attorney general is required under this section to maintain the confidentiality of certain information, other individuals who are:

(1) designated in writing as agents of the attorney general for purposes of the investigation in which the information is obtained; and

(2) acting on behalf of the attorney general during the investigation;

are also required to maintain the confidentiality of the information under this section.

(d) A person who is served with:

(1) a request for information;

(2) a subpoena to give testimony orally or in writing; or

(3) a request or order to produce books, papers,

1 correspondence, memoranda, agreements, or other
2 documents or records;
3 under this chapter may apply to any court for protection against
4 abuse or hardship.

5 Sec. 7. If an investigation conducted by the attorney general
6 under this chapter results in a finding that gasoline is being sold
7 below cost, the attorney general may bring an action in a circuit or
8 superior court with jurisdiction in the county where the sale of the
9 gasoline allegedly occurred. If the court finds that the retailer sold
10 gasoline below cost in violation of section 4(a) of this chapter, the
11 court may assess a civil penalty against the retailer. The amount of
12 the civil penalty may not be more than one thousand dollars
13 (\$1,000) per incident.

14 Sec. 8. Civil penalties collected under section 7 of this chapter
15 must be deposited in the state general fund.

 (Reference is to SB 511 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Commerce and Consumer Affairs.

GARTON

Chairperson